



**STATEMENT BEFORE THE  
SUBCOMMITTEE ON ENERGY AND RESOURCES  
COMMITTEE ON GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES  
HEARING ON  
METHYL BROMIDE:  
ARE U.S. INTERESTS BEING SERVED  
BY THE CRITICAL USE EXEMPTION PROCESS?**

**submitted by**

**MICHELLE M. CASTELLANO  
Attorney and Vice President  
MELLANO & COMPANY  
SAN LUIS REY, CALIFORNIA**

**on behalf of the**

**SOCIETY OF AMERICAN FLORISTS  
AMERICAN NURSERY & LANDSCAPE ASSOCIATION  
CALIFORNIA CUT FLOWER COMMISSION**

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**Contact:**

**Lin Schmale  
Society of American Florists  
(703) 836-8700**

Chairman Issa and Members of the Committee, we thank you for this opportunity to present joint testimony on behalf of the floriculture, nursery, and landscape industry of the U.S. The topic of continued availability of methyl bromide to U.S. nursery and floriculture growers is of huge importance to our industry.

We are complying with the Montreal Protocol. However, our industry is in danger because we are not being treated fairly under the terms of the Treaty. We have demonstrated our compliance, and we ask Congress to act to ensure that U.S. interests are protected under the terms of the Montreal Protocol.

At the outset, I want to thank not only the members of this Committee and its staff, but also those other members who have been particularly supportive throughout this lengthy and frustrating process. Congressman George Radanovich and his staff have worked for legislation that we believe will address the problem. Congressmen Darrell Issa and Mark Foley gave up part of their 2004 Thanksgiving holidays to be with us at the international meeting of the parties in Prague, and not only were there, but were tireless and indomitable in their attempts to understand and address the problems we are facing. Congressman Roy Blunt and Mark Anderson, of his staff, have been unyielding in their determination to help us. We very greatly appreciate all of your support in making an effort to understand and address the problems associated with the implementation of the Montreal Protocol.

The Society of American Florists (SAF) is the national trade association representing the entire floriculture industry, a \$19 billion component of the U.S. economy. Membership includes about 10,000 small businesses, including growers, wholesalers, retailers, importers and related organizations, located in communities nationwide and abroad. The industry produces and sells cut flowers and foliage, foliage plants, potted flowering plants, and bedding plants. Our products compete in an international marketplace. U.S. growers, whose ability to compete in that international marketplace is often at stake, are very concerned that their rights under the Montreal Protocol be supported by the U.S. government. Methyl bromide is a critical management tool in many kinds of production, particularly in Florida and California.

The American Nursery & Landscape Association (ANLA) is the national trade association for the nursery and landscape industry -- producers, retailers and landscapers focusing primarily on trees, shrubs and other woody ornamentals, perennial plants, and bedding plants. ANLA represents 2,500 production nurseries, landscape firms, retail garden centers and horticultural distribution centers, and the 16,000 additional family farm and small business members of the state and regional nursery and landscape associations. ANLA's grower members are estimated to produce about 75 percent of the nursery crops moving in domestic commerce in the U.S. that are destined for landscape use. Methyl bromide is a critical pest management tool for production of many types of planting stock, such as the fruit trees and strawberry plants grown for America's orchards and farms.

The California Cut Flower Commission (CCFC) is a non-profit public corporation formed in October 1990 by and for growers, under the laws of the State of California. Its mission is to provide a unified effort by growers to enhance the performance of the California cut flower and greens industry, by providing promotion, marketing, government education, and research on behalf of the industry. It was voted into being by a referendum of cut flower growers and is financially supported by grower assessments on the sales of fresh cut flowers and cut greens.

In crop value, nursery and greenhouse crops have surpassed wheat, cotton, and tobacco and are now the third-largest crop in the U.S. – behind only corn and soybeans. Nursery and greenhouse crop production now ranks among the top five agricultural commodities in 24 states, and among the top 10 in 40 states. Growers produce thousands of varieties of cultivated nursery, bedding, foliage and potted flowering plants in a wide array of different forms and sizes on 1,305,052 acres of open ground and 1,799 million square feet under the protective cover of permanent or temporary greenhouses, across the United States.

#### **I. U.S. ORNAMENTALS GROWERS ARE IN COMPLIANCE WITH THE TERMS OF THE MONTREAL PROTOCOL -- BUT DO NOT RECEIVE THE CRITICAL USE EXEMPTIONS TO WHICH THEY ARE ENTITLED UNDER THE PROTOCOL**

The United States is a signatory to the Montreal Protocol. Under its terms, U.S. growers are entitled to a Critical Use Exemption (CUE) if practicable and economical alternatives are not available, efforts have been made to find those alternatives, and a significant market disruption would result from lack of availability of methyl bromide. U.S. growers have complied with the terms of the treaty. We are entitled to our exemption. But we are not receiving the full exemptions to which we are entitled under the treaty.

The U.S. ornamental industry's requests for a Critical Use Exemption are prepared in great detail and with considerable effort and expense. They are exhaustively reviewed by our government, adding even more burden to the process. After all that, we are subjected to non-scientific criticism and cuts at the domestic and international level. The process at the international level appears to be political, not scientific -- and U.S. growers are in danger of irrevocable harm.

U.S. growers are in compliance with the terms of the Montreal Protocol. When we have economic and practical alternatives to methyl bromide, we use them. We have made our best efforts, and invested hundreds of thousands of dollars in research to find workable alternatives.

Today we are faced with an international, political process which is attempting to circumvent the Critical Use Exemption process to *force* U.S. growers to discontinue the use of methyl bromide -- whether they have alternatives or not. It will force U.S. growers out of business, and those who do not go out of business will be non-competitive in the global marketplace. We believe that the agenda at the international level is to work deliberately against U.S. interests.

We respectfully request that the U.S. Congress act, quickly and forcefully, to protect our rights under that treaty.

## II. THE BASIC CUE PROCESS

1. U.S. growers prepare a very detailed application for EPA, setting out their efforts to find alternatives, the reasons why alternatives do not work, and the economic reasons why methyl bromide must continue to be used.
2. EPA reviews, and as necessary, supplements this application and ensures that the U.S. applications are complete and accurate. Note here that EPA has usually reduced the amounts we request, and we question those reductions.
3. EPA submits the application in a timely fashion to the Secretariat of the Montreal Protocol.
4. The U.S. application and all other applications are reviewed by MBTOC and TEAP (the “scientific committees” of the Montreal Protocol governing body)..Again, significant reductions are recommended, we believe without scientific justification.
5. The full meeting of the parties to the treaty votes on and approves the allocation, giving great weight to the recommendations of MBTOC/TEAP.

## III. THE MONTREAL PROTOCOL CRITICAL USE EXEMPTION (CUE) PROCESS IS SIMPLY NOT WORKING AT THE DOMESTIC OR INTERNATIONAL LEVEL. THE U.S. CONGRESS MUST ACT TO PROTECT U.S. GROWERS.

The U.S. cut flower and foliage industry is in complete compliance with the Montreal Protocol and the terms of its Critical Use Exemption Process. While the Montreal Protocol deals with the phase-out of the production of methyl bromide, the Protocol also clearly provides for a Critical Use Exemption. In short, an application can be made for continued use of methyl bromide if efforts have been made to find alternatives. If feasible and economical alternatives are not available, then commodities can continue using methyl bromide.

Yet this provision is not being followed in the implementation of the Treaty. Despite being in compliance with the Protocol, the U.S. is being forced to take arbitrary cuts with absolutely no scientific reasoning and no justification under the Protocol terms. That is not the Protocol that the U.S. signed, and the U.S. government must not accept it.

We are not suggesting that the U.S. withdraw from the Protocol – just that we ensure that the Protocol’s terms are being followed. Only in this way can Congress tell the rest of the world that the U.S. *will* not only comply with the terms of the treaty — but that the U.S. *will not* submit to the political machinations of other members of the international body which are deliberately undermining U.S. interests.

The U.S. government agreed to the terms of the Montreal Protocol. We, the U.S. growers, have followed all of the requirements of the Protocol. **PLEASE MAKE SURE THAT WE ARE PROTECTED UNDER THOSE TERMS.** That is all that we are asking.

### A. EPA’s Arbitrary Reduction

In the CUE process, applications are submitted to EPA for initial review. Despite EPA’s best attempts and relentless efforts to understand agricultural practices and pesticide/fumigation needs -which differ not only from crop to crop, but differ from region to region - the individuals at EPA are acting primarily as accountants in putting together a final U.S. package for submission to the international body. EPA seeks to fit each commodity nicely into a BUNI chart so they can easily come up with a formula determining our industry’s methyl bromide needs. Unfortunately, we do not fit into perfect charts and graphs, and assumptions are being made at EPA to squeeze us into charts and determine our agricultural needs.

Please consider the U.S. ornamentals industry. We at Mellano & Company farm over 400 acres (employing over 200 employees) and grow over 50 different crops of flowers and greens, with upwards of 20 different varieties within each of those crops. Unlike other agricultural farms, you have to envision our farm as a patchwork crazy quilt, with each square constantly changing in terms of crops, cultivating times, disease, pests and irrigation needs – and market demands.

We cannot fit our growing practices into one neat formula because we are ever-changing and cannot afford to let our ground sit unused and idle. We must respond quickly to market demands, as well as pest and other growing requirements, and have the adequate tools to prepare our land for these changes. in time to produce a saleable crop.

In the ornamental industry, Mellano & Company is only one grower, in one region. To try and make our entire industry fit into one BUNI chart to determine all of our methyl bromide needs is just not accomplishable.

We will continue to work with EPA to ensure their better understanding of each of our agricultural issues, but in the meantime, our application amounts are reduced by EPA and we cannot afford this unscientifically based cut.

## **B. MBTOC/TEAP Arbitrary Reduction**

MBTOC/TEAP (the “scientific advisory committees” of the Montreal Protocol) are tasked with reviewing the countries’ applications to make sure they are based on sound science. After this review, MBTOC/TEAP makes a recommendation to the parties as to what each country’s allocation should be. That recommendation is supposed to be based on their scientific reasoning.

Our applications, already reduced by EPA, are presented to MBTOC/TEAP. We are further frustrated when the MBTOC/TEAP recommendations are a further reduction with no scientific justification.

U.S. State Department Deputy Assistant Secretary for the Environment Claudia A. McMurray sent an excellent formal letter to the Ozone Secretariat of the United Nations Environment Program, in which she argued effectively against the cuts that MBTOC/TEAP proposed. She said:

*"We were surprised to find that the TEAP and its subsidiary body, the Methyl Bromide Technical Options Committee (MBTOC), took what appears to be an arbitrary approach in making recommendations for 2006 CUE requests.... The MBTOC/TEAP has reached very different conclusions from our technical experts regarding the amount of methyl bromide for which no economically or technically feasible alternatives are available for U.S. users. However, it is unclear whether the MBTOC/TEAP recommendations are based primarily on an arbitrary 20% reduction factor or if there has been a more detailed analysis made for the specific crops and regions contained in the U.S. CUE request.... Most importantly, much of our analysis was based on a detailed review of whether alternatives were economically feasible. In a number of cases where an alternative may have been technically feasible, we found that the costs associated with use of that alternative were not viable from an economic standpoint. However, the MBTOC recommendation does not address our economic analysis, nor does it appear to include its own economic analysis. It is therefore unclear whether MBTOC has determined that alternatives are in fact economically feasible since this issue appears not to have been addressed."*

The following quotation from the MBTOC/TEAP report on the CUE nominations is particularly revealing of the unscientific and biased nature of the MBTOC decisions:

*"MBTOC assumed that an alternative demonstrated in one region of the world would be technically applicable in another unless there were obvious constraints to the contrary e.g., a very different climate or pest complex." [Report of the TEAP, October 2004, page 5]*

This assumption is completely invalid and unjustified. This kind of "assumption" is not based on science. The U.S. has provided detailed scientific information on why certain alternatives available to other countries will not work in the U.S. Not only do climate and pest complexes differ, but the economies differ. An alternative which might be economical in a developing country may not be usable in the U.S., where cost/profit margins are considerably slimmer and labor, environmental compliance, and chemical costs are very high.

It is absolutely essential that MBTOC and TEAP be required to provide scientific justification for their decisions, and detailed rationales of their recommended cuts to the nominating party. Without understanding why MBTOC/TEAP are recommending cuts, it is impossible to answer or defend a nomination, and we are forced to accept what can only be classified as an arbitrary reduction. Our State Department cannot argue effectively on our behalf so long as this charade of scientific review is allowed to continue.

### **C. The Negotiations at the Meeting of the Parties are Political, Not Science-Based**

According to the agenda, the discussion period of the international meetings is directed around the CUE process of the Montreal Protocol. However, the underlying agenda for most parties has nothing to do with the Protocol treaty terms.

Instead, discussion and negotiations tend to revolve around three perceptions: (1) that the US requests are too large; (2) national management strategies and (3) stocks or existing inventories.

**1) The perception that the U.S. request is too large and should be reduced, or reduced to "zero-use" over time.** Discussion at the international meetings imply that the U.S. applies for too much methyl bromide under its CUE application, and the amount should be reduced and phased out over time.. Under the Montreal Protocol, if no economical and feasible alternatives exist for an industry, despite ongoing research to find an alternative, the industry can utilize the CUE process.

The United States' agricultural community has complied with the CUE requirements, despite the fact that they are cumbersome, time-consuming and costly. We continue to produce research at internally and at top universities for alternatives. We have spent a tremendous amount of time defending and educating our applications to EPA and to MBTOC/TEAP. We have thoroughly complied with the process.

Yet our applications continue, year after year, to be arbitrarily reduced, without any or with very inadequate scientific explanation.

There are forces in the international body who are determined that the CUE process should be a declining process -- in other words, no matter what kinds of industry changes, what kind of pest pressure, what kinds of crop patterns -- we should reduce **the amount of methyl bromide to which we are entitled under the CUE process**, year by year, until all methyl bromide use is eliminated.

MBTOC/TEAP stated in their October 2004 Report that:

*“... each Party that makes a critical-use nomination after 2005 has to submit a national management strategy for its methyl bromide phase-out ... [including] estimates of annual market penetration of alternatives to bring forward the time when it is estimated that methyl bromide consumption for such uses can be reduced and/or ultimately eliminated....”*

Several of the parties vigorously objected to this practice during the meeting, and the Report of the Prague meeting (2004) states:

*“A number of Parties felt that imposition of a 20 per cent reduction ... could be understood as an attempt by the Methyl Bromide Technical Options Committee to recommend a policy. They strongly expressed the view that the Committee had strayed from its mandate to provide technical assessments and to restrict itself to evaluating nominations according to the criteria laid down in the relevant decisions of the Parties....” [Report of the 16th Meeting, page 14, item 100]*

As noted earlier, it is the clear intent of some to force a year-by-year decline in CUEs approved by the Parties. Such discussions and goals are contrary to the Treaty. The Treaty provides for the Critical Use Exemptions in cases where practicable and economical alternatives do not exist. The Treaty does *not* provide that CUEs should decline year by year.

## **2) National Management Strategy: Reduction to “Zero-Use”**

The international parties now require countries with CUE applications to also submit a National Management Strategy. At the recent meeting of the parties, the U.S. spent a significant amount of time negotiating the details of this plan, rather than defending the allocations on the table.

From the 2004 International Meeting’s Report: *“Where there was no change in quantity of methyl bromide used based on historical data and in the temporary absence of such detailed management plans, TEAP and its MBTOC adopted an interim standardized phase-in schedule ... for nominations where MBTOC recognized existing technically feasible alternatives were available...In instances where technically feasible alternatives were available, MBTOC typically suggested a 10-20% reduction factor....” [TEAP Report, October 2004, page 10, emphasis supplied]*

We are concerned that not only is this taking the focus away from the allocations that are currently being cut, but this concept (supported by the E.U. (and particularly by those countries within the E.U. who do not use methyl bromide) is just another way to phase out the CUE allocations despite the fact that no where is that required by the Protocol.

## **3. Stocks**

With each allocation, more and more of the CUE allocations have been directed to come out of existing stocks, rather than from new methyl bromide production. The Montreal Protocol deals with new production of methyl bromide and does not refer to or control stocks of pre-existing material. However other countries and our own domestic environmental groups have placed tremendous pressure on the U.S. State Department to accept that part of our allocation should come from stock. This is not part of the Protocol and should not be negotiated.

## **IV. EPA’S FINAL RULE NEEDS TO BE MADE TIMELY**

At the international level, the parties agree and ratify an amount, based on MBTOC/TEAP’s recommendation. Once this is approved by the parties at the international level, EPA must publish its final rule. The approved amount of methyl bromide can now be manufactured and made available for distribution to be made available to us, the end-user.

EPA's final supplemental rule for the 2005 allocation was published on December 23, 2005.

In response to agriculture, industry and congressional pressure, EPA published its 2006 rule on January 31, 2006. This is still too late!!!! Manufacturers cannot even manufacture the methyl bromide until this rule is published, let alone distribute it to the end-users. As a flower grower, we have just concluded our Valentine's Day crops and need to quickly prepare our land for new crops as well as our upcoming Mother's Day holidays. No 2006 methyl bromide production has begun; therefore it will be some time before it will even be made available to us.

EPA's rule must be more timely. By postponing the allocation rule, it seems another sector of our own government is forcing us to deplete methyl bromide stocks – which is not part of the Protocol. And if stocks no longer existed (as they may not before the end of 2006), EPA's failure to publish the rule in a timely manner would single-handedly put us (and hundreds of thousands agricultural employees) out of business.

## **V. WHY THE CUE PROCESS IS NOT WORKING**

The CUE process is not working. Our government needs to make sure that it does not negotiate outside of the Protocol's parameters.

Perhaps the most troublesome aspect to this story is that while our allocation is being dwindled away, our competitors in lesser developed countries will continue to have methyl bromide available for their use for several years. U.S. growers, in an increasingly international economy, need better and better tools to remain competitive. Instead we are being forced to accept less than we are entitled to.

Research has not found an alternative to methyl bromide despite our best efforts. We are not there yet. Therefore, we take the cumbersome steps to comply with the Montreal Protocol- we continue to support research seeking these alternatives; we fulfill a lengthy and difficult application process, and cooperative to provide any additional information. We have followed the steps as defined by the Montreal Protocol.

We understand that complying with the process is not only burdensome for U.S. industry, but is also a difficult battle for the State Department and EPA. It is expensive, time-consuming, and frustrating. But decision at the international level must be made on the basis of the Protocol, not on other countries' and NGO's predetermined agendas.

## **VI. CONCLUSION**

The CUE process is not working, and U.S. industry is in danger of becoming non-competitive as a result. We are NOT receiving the exemptions we are entitled to under the Montréal Protocol. It is time for this Committee to provide legislative insistence that will support U.S. growers.

The U.S. industry has fulfilled the terms of the Montreal Protocol. It is in compliance. Year after year, we have prepared and submitted CUE requests, based on the amounts we need. However, both EPA and MBTOC/TEAP have each year made significant, and, we believe, scientifically unjustified cuts to our requests. The result is that each year since this process started, our allocations have decreased significantly from the allocation of the previous year, and, of course, from our requested amount. Yet our needs have not decreased. And because we are still in the early stages of CUE allocations, the ramifications of these cuts still may not have been fully realized.



The discussion and stated agenda at the international meeting is the CUE process. However, the underlying agenda for many of the participants is completely different – and has nothing to do with the Montreal Protocol Treaty. The State Department must defend us under the terms of the protocol or walk away.

Getting U.S. CUE allocations to “zero-use” over time is not required by the Montreal Protocol. The treaty clearly provides that until economic and practical alternatives are found, so long as continued research is being done, the industry should have CUEs. The Treaty does not envision that at some arbitrary date in the future we would be forced to do without methyl bromide if no other alternatives were available.

The United States government must support the U.S. agricultural economy in ensuring that methyl bromide remains available to growers, until suitable alternatives are found and can be implemented. We cannot simply bow to decisions which appear to be predetermined and which will put our agricultural sector at a very significant competitive disadvantage in the international marketplace. The phaseout of methyl bromide is a critical issue for U.S. agriculture, and we respectfully request this Committee for support and assistance in reaching a reasonable solution to what is rapidly becoming a crisis for many producers, and the workers they employ across the United States.